In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1473

MONOGRAM MODELS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–4a) is not yet officially reported. The Board's decision and order (A. 3–18) [1] are reported at 170 NLRB No. 84.

JURISDICTION

The judgment of the court of appeals was entered on March 16, 1970 (Pet. 2). The petition for a writ of certiorari was filed on April 24, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "A." refers to the appendix filed in the court below.

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QUESTION PRESENTED

Whether substantial evidence supports the finding of the National Labor Relations Board that the Company interfered with the distribution of union literature by non-employee organizers on the shoulder of the public highway at the entrance to the company's plant, in violation of Section 8(a)(1) of the National Labor Relations Act.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at pages 2–3 of the petition.

STATEMENT

A. THE BOARD'S FINDING OF FACT

Petitioner Company is engaged in the manufacture of model hobby products. Its plant in Morton Grove, Illinois, is situated on a rectangular-shaped lot fronting to the west on State Highway No. 43, also known as Waukegan Road—a four-lane paved highway with a posted speed limit of 45 miles per hour. The Company's premises are fenced in on all sides except on the west (A. 4, 5[1] n. 4, 7; 36). The last 50 feet of the western portion of the Company's property has been impressed with "a permanent easement for purposes of a public highway" (A. 7; 35). It consists of a paved roadway, which constitutes one-half of Highway No. 43, next to an unimproved and irregular shoulder extending along the edge of the pavement. A number of concrete parking berms separate the dirt shoulder

from the Company's paved parking lot and plant building (A. 7; 23, 45–46). Since there are no sidewalks in front of the Company's premises, pedestrians traveling north and south on the east side of Highway No. 43 must use the dirt shoulder (A. 7; 23). There is an entrance and exit at the southwest corner of the property, and stoplights there control the traffic entering and leaving the plant and parking lot (A. 27–29, 36, 38, 49, 52).

During early 1967, District No. 8, International Association of Machinists and Aerospace Workers, AFL–CIO, attempted to organize the Company's employees. On various occasions, the Company interfered with the Union's distribution of organizational literature to the employees. The company admitted that it had requested and secured the support of local police to force the removal of non-employee Union agents who were distributing literature at "the intersection of Waukegan Road and the entrance to [its] parking lot"; that the Company's president had threatened the organizers "with arrest and prosecution for criminal trespass if they persisted in the distribution of union literature" at this intersection; and that the Company's president, "while awaiting the arrival of the local police and in full view of the employees, kept under surveillance the union representatives seeking to distribute union literature to employees entering and leaving [the] property" (A. 19–20). It was stipulated that the Union organizers, while attempting to engage in the above distribution, were standing on "the shoulder of Waukegan Road adjacent to the stop light located at the

northeast corner at the intersection of Waukegan Road and the entrance to [petitioner's] property (on the part of [petitioner's] private property subject to an easement for purposes of a public highway)" (A. 22).

B. THE DECISIONS OF THE BOARD AND THE COURT OF APPEALS

The Board concluded that the Company had interfered with the distribution of union literature by nonemployee organizers on the shoulder of the public highway at the entrance to the plant, and had thereby violated Section 8(a)(1) of the Act (A. 4, 13–14). The Board ordered the Company to cease and desist from engaging in the unfair labor practice found and from interfering with employee protected activities in any like or related manner, and to post appropriate notices (A. 5, 14–16).[2]

The court of appeals sustained the Board's findings and enforced its order (Pet. App. 1a–4a). After full argument on the factual issue, the court stated (Pet. App. 4a): "the shoulder area here in dispute is legally indistinguishable from a sidewalk"; access "to such a public way is associated with First Amendent rights"; and the Company "could not, then, without

[2] The Board denied the Company's motion for clarification "as to the character of the property" where the distribution occurred and to reopen the record to take additional testimony for this purpose, stating (A. 17):

> The Board specifically designated [in its initial decision] the point at which the Union organizers were standing as the shoulder of Waukegan Road adjacent to the stop light located at the intersection of Waukegan Road and the entrance to [petitioner's] private property which was subject to an easement for purposes of a public highway.

committing a Section 8(a)(1) violation, threaten the non-employee organizers with criminal trespass prosecution, since their use of the property was lawful and protected [citations omitted]."

ARGUMENT

Petitioner acknowledges that the Board and the court below "properly concluded * * * that non-employee union organizers may, in the exercise of their First Amendment rights, use the highway shoulder for organizational purposes * * *" (Pet. 6). Petitioner's sole contention is that the organizers were in fact not standing "on the highway shoulder" (*ibid.*). This assertion goes only to the facts of the case. It is contrary to the stipulated evidence of record (*supra*, pp. 3–4), and was rejected by both the Board and the court below. The issue thus does not merit review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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